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THE
PROPOSED REFORM
OF THE
COUNTIES OF SCOTLAND
IMPARTIALLY EXAMINED:



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THE
PROPOSED
OF THE
COMMISSIONERS



THE
PROPOSED REFORM
OF THE 2
COUNTIES OF SCOTLAND
IMPARTIALLY EXAMINED:
WITH
OBSERVATIONS
ON THE
CONDUCT OF THE DELEGATES.



BY ROBERT FERGUSON JUNIOR,
OF CRAIGDARROCH. *R*

EDINBURGH:
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M,DCC,XCII.

PROPOSED REFORM

COUNTIES OF SCOTLAND

IMPARTIALLY EXAMINED

CONSERVATION



BY ROBERT PITCHER
OF GLASGOW

EDINBURGH

PRINTED FOR

EDINBURGH: BATHURST AND TAYLOR

M.DCCC.XXXI

THE only fault that can be ascribed to that which our ancestors established is, that it has not proved to be perpetual ; which is no more than may be justly said of the best human constitutions that ever have been in the world. If we will be just to our ancestors, it will become us in our time rather to pursue what we know they intended, and by new constitutions to repair the breaches made upon the old, than to accuse them of the defects that will for ever attend the actions of men. Taking our affairs at the worst, we shall soon find, that if we have the same spirit they had, we may easily restore our nation to its ancient liberty, dignity, and happiness, and if we do not, the fault is owing to ourselves, and not to any want of virtue and wisdom in them.

ALGERNOON SIDNEY'S

Discourses concerning Government.

THE only man that can be trusted to that which our
anxious established is, that it has not proved to be
perpetual: which is no more than may be easily said
of the best human constitution that ever have been
in the world. If we will be true to our nature, it
will become us in our time rather to grow, than we
know they intended, and by new combinations to
regain the freshness that the old man is to ac-
quire. The object of the reformer, that will for ever stand
the action of men. Let us our share in the work,
we will not then, we have the same right
to say, we have the same right to be in an-
other's hands, and we have the same right to be
not the fault is owing to ourselves, and not to any
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TO THE
COMMISSIONERS OF SUPPLY
FOR THE
COUNTY OF DUMFRIES.

GENTLEMEN,

TO whom can I with equal propriety dedicate the following sheets, as to you whose conduct has uniformly afforded a striking example of that independence of spirit, which forms the characteristic of the body of Commissioners of Supply in Scotland? If I could flatter myself, in any degree, with the idea of contributing

ting to establish you in those rights,
to which I think you so justly
entitled, it would be a reward
much more than sufficient, to re-
pay me for any pains I may have
bestowed upon the subject.

I have the honour to be,

Gentlemen,

Your most obedient, and

Faithful humble servant,

ROBERT FERGUSSON.

EDINBURGH,
Nov. 22. 1792.

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THE

PROPOSED REFORM, &c.

A Plan for Reforming the representation of the counties of Scotland, has for some time occupied the attention of the public. It is a Question of considerable moment, whether we view it as affecting the rights of the landed proprietors ; or, as involving in its decision the general interests of the people of this country. Has not every man liberties to protect, and to whom is it not a matter of concern, that those who are chosen to defend them should be men who will, upon every occasion, speak the genuine opinions of the people ? It is time we should be represented by men whom neither self-interest, nor fear, will turn aside from a faithful discharge of their duty ;

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men who strangers to faction, will prove themselves at once the Friends of the People, and the Friends of the Constitution. In Scotland particularly it is essential to have patriotic representatives. At a distance from the seat of government, and differing in our laws and customs from the rest of Great Britain, we have separate rights to support, and separate interests to watch over.

Popular questions, have too long been made the engines of party; and the weapons of the people have hitherto been wielded only for the interest of individuals. Let not then the nation be deceived by the insinuations of those who consider the present minister as the author of those evils of which they complain. The unprejudiced mind, which takes a liberal and comprehensive view of things, will look elsewhere for the source of our disorders; and for their remedy will look to other means than a change of ministers. When we examine the course of events, since the Revolution, we at the same time trace

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the gradual progress of the corruption of our government. At that period the evils of an unequal representation were less felt, because the influence of the crown was limited. But, when we consider the enormous increase of our debt and our taxes, of the places and employments in the disposal of the Crown, together with the state of our representation, which the changes occasioned by trade and commerce render every day more unequal, Is it surprising that, in practice, our constitution should have lost that poize which its theory points out, as essential to its preservation?

In an extensive country, where the voices of the people can only be collected through representatives, and where, from the progress of corruption, it might even be dangerous to extend indiscriminately to all the privilege of voting for these representatives, the selection of men, to whom this power is to be entrusted, becomes the foundation on which we are to depend for the security of every right we enjoy. In considering this

this subject, it is a principle not to be overlooked, that the power of representation, wherever it may be placed, is, like all other delegated powers in government, a trust vested for the good of the community; not for the private interest and advantage of those individuals, in whom the right of voting may have been exclusively vested. Far less can those individuals pretend to any thing like a property in their votes. It is the duty of the legislature, as the interest of the people may require it, to extend their privilege to others, or, by transferring the deposit, to annul it altogether.

Having laid down these general principles, I proceed to examine the actual state of the county representation of Scotland, and to show how far the remedies proposed will prove effectual for removing the evils complained of. When we consider the oaths which have been prescribed, the innumerable acts and regulations that have been framed for the improvement of our election

election laws; and when we observe, that the same disgraceful transactions still prevail at this day in our county elections, we are led to imagine, that there must exist, in the system itself, some radical defect. Perhaps to one circumstance alone, the right of voting being attached to superiority and not to property, we may ascribe the origin of all those vices which deform our system of representation. It has given rise to the splitting of superiorities; and we all know that, by this means, the representation of the Commons of Scotland has been fixed in the hands of the aristocracy. The question now is never asked, Whom do the freeholders mean to return, but, Whom does this or that great man intend to bring in for the county at next election? When this is the case, things are not as they should be. In times like these, it is dangerous for the aristocracy to extend their power beyond the limits of their order; satisfied if they are left (and I hope they will be left) that share in the government

which

which the constitution allots to them. But, I fear, that, as long as the human mind continues the same, the short-sighted policy of man will grasp at present power, even at the expence of future and permanent security. One of the greatest causes of discontent at this moment (and in my opinion one of the justest) is the interference of peers in elections; but, I see little reason to hope, that either public virtue will induce, or a sense of danger force them to withdraw this influence. Nor do I expect, that our peers will support the Reform of the County Representation of Scotland. It is certainly the death-warrant of *their* power; but *we* have the consolation to think, that it sets up in its place the natural and independent interest of the country. This is the object of the reform; and it will be difficult for the aristocracy of Scotland to make head against the general voice of the people, expressed upon a point of this importance, and a measure of such evident utility.

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The projected reform is confined to two general heads; 1st, The reduction of the qualification to 100 l Scots, and 2^{dly}, The right of voting should be vested in the proprietor, not in the superior of lands. I doubt much whether any reform short of this will anywise better our condition; nor do I think that, by any other means, we can possibly prevent the encroachments of the still increasing influence of the peerage. The oath, prescribed by the 7th of George II. it was expected, should have been some check to the enormities committed in the county elections of Scotland. But, it would appear, that the friends of great men are not so easily intimidated by oaths. Hear their reasoning: I am desired to swear, that, "the lands and estate, for which I claim a right to vote, is actually in my possession, and do really and truly belong to me, and is my own proper estate; and is not conveyed to me in trust, or for, or in behalf of, any other person whatsoever." This I can

can safely swear, because the superiority, given me in life-rent, is in my possession, really belongs to me during my life, and is, so far as the life-rent goes, (a title acknowledged by law to be sufficient) my own proper estate. Now, as to its being conveyed to me in trust, &c. I ask what is a trust? A trust is a something committed to charge, of which an account must be given; the conveyance of a thing revokable upon abuse. Is my vote of this nature? Can I be forced to give an account of the use I have made of it? Can it be revoked upon abuse? No; for I can swear, that "neither I, nor any person, to my knowledge, in my name, or on my account, or by my allowance, hath given, or intends to give, any promise, obligation, bond, backbond, or other security whatsoever, *other than appears from the tenor and contents of the title,* upon which I now claim a right to vote, for re-disposing and re-conveying the said lands and estate, in any manner of way whatsoever;"

“ver,” and as the tenant is bound to pay
to me, and to no other person, one penny
Scots, I can also swear, “not for mak-
“ing the rents or profits thereof forth-
“coming to the use or benefit of the per-
“son from whom I have acquired the said
“estate, or any other person whatsoever.”
I have then to make oath, “That my ti-
“tle to the said lands and estate is not no-
“minal and fictitious, created, and reserv-
“ed in me, for the purpose of voting for
“a member to serve in parliament.” I
reason thus: Hundreds purchase bare su-
periorities for the mere purpose of voting,
and, if this clause does not comprehend
them, it cannot comprehend me. My title
is not nominal or fictitious, but real, for
the life-rent is fully vested in my person,
and the life-rent of a superiority by the
law of Scotland constitutes as undoubted a
right to vote as the property itself. I con-
clude by declaring, “That the same is a
“true and real estate in me, for my own
“use, and benefit, and for the use of no

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“ other

“ other person whatsoever ; and that is the
 “ truth, as I shall answer to God.” Thus
 the purpose of an oath (in its nature as
 comprehensive as can be imagined) is de-
 feated by the ingenuity of men, who, if by
 art and subterfuge, they can explain away the
 words of an oath, think they will escape
 the charge of perjury ; although they are
 sensible that, if the spirit and intention of
 it be looked to more than the letter, they
 are guilty of that crime. That there are
 men, in this country, who reason thus, and
 who hold these principles, will appear too
 evident, when we look to the rolls of the
 freeholders in Scotland. Is there any re-
 medy for such abuses ? I know but one ;
 a total transfer of the right of voting from
 superiority to property. In that case, few,
 to serve a political job, would be foolish
 enough to make over the absolute property
 of their lands, when they had no recourse
 at law for recovery of them.

I know no case in which wadsetters should
 be

be allowed to vote, if we wish to shut the door to all possibility of abuse. Life-renters, under the same idea, should be entitled to vote upon estates only which fall to them by course of law, such as a husband in virtue of the property of his wife, the proprietor of an entailed estate, &c. This would be necessary to prevent fictitious votes being made by elusory transactions, upon property, as they now are upon superiority.

I have thus far argued for abolishing superiorities as the only means of preventing undue influence in elections. I now come to view it in another light, as a matter of justice to a large and respectable body of landed proprietors. In former ages, it happened in this country, as in every other where the feudal law had taken root, that vassals held their lands at the will of their superior lords. Their lords appeared in the King's Parliament, and by them they were supposed to be represented. By degrees,

gress, the vassals acquired a more permanent interest in their lands, and at last came to hold them as secure, and as independent, as their superiors themselves held their's of the Crown. But I need not dwell upon a subject so generally known. No person will dispute that these vassals are now the absolute, uncontrollable proprietors of the land; and, if property be considered, in our government, as the basis of representation, upon what principle of reason, of justice, or of common sense, can the rights of these proprietors be withheld from them?

The next point to be considered, is the reduction of the qualification. It is proposed to reduce it to the valuation, which now entitles heritors to be commissioners of supply. Nothing would, in my opinion, contribute so much to the purity of our representation. The commissioners of supply are placed in that rank, which forms, in every country, the most

most virtuous, and the most independent part of the community. They are equally removed from the extremes of poverty and riches, and equally free from the vices and corruptions of either. They are the men who are the least liable to be acted upon by influence of any kind. Their fortunes are independent, in the situation of life in which they are placed. They are above the reach of a pecuniary bribe; their habits of life protect them from the influence of offices and employments. They will neither turn out the needy dependents of a court, nor the mean stipendiaries of a minister. To whom else, then, can we look for the genuine and unbiassed opinions of the sound part of the community in this country?

It is the peculiar advantage of this plan of reform, that it opens no door to those speculative systems of a perfectly equal representation; systems which I have always thought impracticable, in the present state of society among us; and which, could they

they be carried into execution, I am convinced, are totally unfit for the situation of this country. But, in this plan of reform, there is a broad line drawn, a well marked limit, which it might be dangerous to pass, but to which the most moderate cannot, I think, scruple to advance.

In reducing the qualification to 100 l. Scots, we shall nearly bring back our representation to the original basis, on which it formerly stood. The act of Charles II. which requires a valuation of 400 l. Scots, where the old extent appears not, was a manifest encroachment upon our constitution. Although it might be difficult to arrive at any very accurate idea of the average amount of the 40 s. land of old extent, in pounds Scots of the present valuation, yet I could hazard an assertion, that the qualification for voting at elections was doubled, perhaps quadrupled, by this act. The 40 s. lands of old extent will, I believe, seldom be found to exceed 150 l.

and

and sometimes not 100 l. Scots, of the present valuation. What objection can there be, then, to a reduction of the qualification to that rate at which it formerly stood in the constitution of the Scottish Parliament?

If this reform be carried into execution, What compensation ought to be allowed to the superior? It must evidently be calculated upon the *real* interest he has, at this moment, in the lands of his vassal. What is this interest? He receives certain feu-duties, which are doubled for the first year after the death of the vassal; and, on the accession of a singular successor, he is entitled to a year's rent of the land. It has been proposed, then, to allow him 30 years purchase of the feu-duties, and one year's rent of the land; and upon these terms that he should be forced to sell to the vassal. This is certainly the utmost to which the superior can pretend, for he can found no claim to an additional compensation, upon the ground that he may have paid for a qualification to

to vote, a price superior to what he will receive by this transaction. If the corrupt state of our representation, and the political jobs of individuals, have, of late, so far raised the price of superiorities, as to attach something like an idea of value to the *mere vote*, that can never enter into the consideration of the legislature. They never can regard such imaginary value as a property, nor, as such, think that any equivalent should be given for it. Although the superior should be bound to sell, yet I do not see how the vassal can be forced to purchase. In some cases, the public good may require, that an individual should be forced to part with his property, on receiving a proper indemnification; but I doubt much whether the same reasoning would be held good to force another to *buy* that property. All that can be said is, Give an equivalent for this object, or you shall not enjoy the advantages accruing from it. If, then, there are vassals who refuse to buy, the superior must continue to vote. I see no immediate remedy for this.

Bat,

But, in order that the end of this reform may by degrees be accomplished, I would leave to every new vassal, on entering the lands, the option betwixt continuing to hold his land of a subject, and becoming an immediate vassal of the Crown, on paying the fixed rate of compensation.

But I shall be told, perhaps, that, allowing all my reasoning to be just, and admitting that this reform might be productive of all the advantages I have pointed out, still there is one argument which will fully answer every thing that I have said, or that can be said upon the subject; *It is dangerous to innovate, in these critical times.* This weighty argument, though less fashionable than it has been, is not yet quite out of vogue. It would be a pity if it fell into disgrace, for it has the very rare advantage of suiting every occasion, and of being adapted to reasoners of every calibre. Do the gentlemen who use this argument mean, that, as long as the world continues

to speculate upon new ideas, and new systems of civil government, we are to stand still, and forbid ourselves the privilege of repairing those breaches in our constitution, which the lapse of time, and the change of situation and circumstances, may have occasioned? In this case, indeed, we may adjourn the question of reform to a distant day; to that day in which means shall be found to arrest the progress of the human mind, and to keep it stationary, till such time as the Parliament of Great Britain shall have examined into, and provided remedies for the disorders of our constitution. For my own part, I had always heard, that the great and the invaluable quality of the British constitution was, that it contained in it a certain renovating principle, a constant tendency to amend and to improve, which could alone preserve it from decay. — “The greatest innovation on the spirit of our constitution,” says Mr Fox, “would be a resolution not to innovate at all.”

Much

Much has been said of the new opinions which have been adopted in France; and many epithets have been applied to those who in this country have stood forward to defend them. Not only all those who have written in favour of the French revolution, but likewise those who have in any way whatever expressed their approbation of that event; all have been involved in one indiscriminating accusation, as disaffected and turbulent characters, as fowers of sedition, and avowed enemies of the constitution of Great Britain. In these accusations I have seen much declamation, and little argument; and I confess I am still to be convinced, that an approbation of *what was lately* the constitution of France, is inconsistent with a sincere love and veneration for our own. What the French constitution may *now be*, after the total abolition of Kingly government, is a question of a very different nature; a question upon which it would be rash at this moment to decide. Our giving or with-holding our approba-
tion

tion to the establishment of a government purely republican in France, must be governed by principles totally distinct from those upon which we may have grounded our opinions respecting the French revolution previous to the 10th of August 1792. But even the man who did approve of what has lately passed in France; who approved of the establishment of a republic as necessary in the situation in which the French nation stood at the 10th of August; even such a man it would be unfair to charge with disaffection to the government of Great Britain. Men may give their sanction to those violent remedies, to which, in extreme cases, a nation may be driven for their own preservation; but it would be absurd to infer, that such remedies are on that account held forth by them as objects of imitation to a country living under a free and well regulated government. In the discussions upon the subject of the French revolution, a most intolerant spirit has prevailed, both on the one side and the other.

It

It must be allowed, at the same time, that this spirit has been stronger and more general on the part of the enemies of that revolution. Many, I have no doubt, on the one side, are actuated by factious, and many by interested motives, on the other ; but I am convinced, there are also many on either side of the question who support their opinions from a sincere conviction of their truth, and abstracted from every idea of selfish or seditious views ; that on either side there are good and bad subjects, friends and enemies to the constitution of their country. My ideas on this point I find fully and eloquently expressed by Dr Parr, in his Letter to the Dissenters of Birmingham : “ Through circumstances that are
 “ the result of accident more than of design ; through the prejudice of our education ; through the habits of our
 “ thinking ; through the conversation of
 “ our acquaintance ; and sometimes, it may
 “ be, through the authority of our teachers ;
 “ difference of opinion will arise. But that
 “ difference,

" difference, when carefully examined, of-
 " ten resolves itself into a question of *more*
 " *or less*; of fit or unfit, as to the time;
 " of proper or improper, as to the mode;
 " of probable or improbable, as to the con-
 " sequence. It *really* turns not upon the
 " actual existence, or upon the general va-
 " lidity of principles themselves, but upon
 " the degree in which they are applicable
 " to some specific or controverted case.
 " As, however, the solution of these diffi-
 " culties must ever be dependent, not only
 " upon the fluctuating nature of all worldly
 " affairs, but upon the many or the few
 " opportunities we have for observing their
 " varying aspects, or upon the greater or
 " less ability we employ to comprehend
 " their relations and effects; there must
 " often be room for suspense of judgment,
 " and there will always be a call for the
 " exercise of charity. On the other hand,
 " impatience of contradiction is both weak
 " and wicked. Instead of facilitating deci-
 " sion, it perpetuates contention; it dark-
 " ens

“ ens the evidence, and obstructs the effi-
 “ cacy of truth itself; it originates in a ra-
 “ dical defect of judgment; and it too of-
 “ ten terminates in a most incorrigible into-
 “ lerance of temper.”

Those who are alarmed at the idea of the people reasoning upon their liberties, pretend to see much danger at this moment in Scotland. For my own part, I do not think any bad consequences can arise from the most general discussion of every system, and every principle of civil government. On the contrary, the more general the discussion, the more security it will afford to a well-constituted system, like that under which we live. I fear nothing from the violent principles of some individuals in this country; they are few in number, and have little influence upon the minds of the people. But let their opinions, violent as they are, have a fair and open discussion; let the people themselves reason upon them, *Dans une nation libre, il est tres souvent indifferent que les particuliers*

ticuliers raisonnent bien ou mal ; il suffit qu'ils raisonnent : delà sort la liberté qui garantit des effets de ces mêmes raisonnemens *. This was the opinion of Montesquieu ; and it is not altogether inapplicable to this country.

I have now to say a word or two to the Gentlemen who compose the Delegation from the different Counties of Scotland. When the subject was brought forward at the General County Meetings, last spring, the object of the proposed Convention was stated to be for obtaining a reform of the representation, upon the principles I have laid down, viz. abolishing superiority votes, and reducing the qualification to 100l. Scots. Under this conviction, the Delegates were chosen. They assembled, in consequence, at Edinburgh, on the 2d July, and entered into certain resolutions. These

* In a free country, it is often indifferent whether individuals reason well or ill. It is sufficient that they do reason : Thence springs a system of liberty which screens them from the effects of that very reasoning.

These resolutions are before the public ; and I believe I am not singular in my opinion when I assert, that they came far short of the expectations which their constituents had formed. So far from any opinion being given upon the specific points of the reform, every expression which could convey the most distant idea of the intention of the Meeting to pursue that object, or even to take the matter into consideration, seems to have been most cautiously avoided. Indeed, the resolutions are couched in such vague terms, and, as it seems to me, in such a studied obscurity of expression, that I am at a loss to discover any one object to which they point, unless it may be some trifling regulation of our election laws.

We cannot suppose it was the intention of the leading men in that Meeting to gain time by unmeaning resolutions, and at last to set the business asleep, by applying some partial remedy to a most deep-

D rooted

rooted abuse. The characters of the gentlemen who composed that Meeting, are a sufficient security against the suspicion of their having had any wish to deceive their constituents and the public, in the expectations which had been held out to them by the greater number of those very gentlemen themselves. Let us rather suppose, that they were averse from entering upon the business, till they should be convinced that the general voice of the country called for the reform. I believe there can now be little doubt upon that head; and there remains, therefore, no longer any obstacle of that kind.

I have heard, that it was the wish of some to confine this reform to the principles of the bill brought into Parliament in 1775, by the Chief Baron, when he held the office of Lord Advocate of Scotland. This bill *, for the time in which

* The Chief Baron's bill went to the abolition of wadsets, and liferent qualifications.

which it was drawn, was perhaps as much as could be done in the business; and it certainly does equal honour to the author of it, as a man of business, and as a friend to his country. But his Lordship himself (whose character no man respects more than I do) must be sensible, that the reform cannot *now* be confined within the same limits. Circumstances and situations have materially changed since the year 1775; and, as the abuses complained of have since that period taken a deeper root, they will require a more powerful remedy.

The Committee appointed by the Meeting of July, "to examine into the present existing defects in the general system of county elections," are ordered to make their report to the Meeting, which assembles on the 10th of next month. What may be the result of their investigation I know not. I presume it will be, "That this reform is indispensable." If the contrary be the case; if the Committee report, and

and the Meeting agree with them in thinking, that all that is required is some *new regulations* in our election laws; this may *retard*, but it cannot *stop*, the progress of the general reform. The sense of the country is already expressed upon it; and, under a Government like ours, the sense of the country, expressed upon a matter of justice and of sound policy, must at last prevail. But I cannot think we shall have to look elsewhere, than to the Convention of Delegates, for bringing forward this reform; and I have no doubt they will resolve on presenting to parliament a bill to its full extent. A question would then arise, whether this bill should be laid before Parliament this Session, or delayed till the sense of the counties is taken upon it, at their general meetings next spring. In this last case, it could only reach Parliament the Session after next. I do not see why it should be delayed a moment. No man can doubt but that the general sense of the counties is at this moment compleatly in
favour

favour of the reform. By referring the bill to the different counties, it is either meant to take the opinion of the commissioners of supply alone, at their general meeting; or of the commissioners of supply, jointly with the freeholders, at a meeting called for that purpose; or, lastly, of the commissioners of supply and freeholders separately, at their respective meetings. In the first supposition, does any man doubt of the sentiments of the commissioners of supply on this subject? or, in the second, does any one suppose that the bill would be negatived at their *joint* meeting with the freeholders? or, thirdly, supposing it were negatived at the *separate* meeting of the freeholders (a circumstance which might happen) is the bill on that account to be given up? These are the questions I put to those who are for sending the reform bill to the counties. If the meeting determine that the bill shall be laid before Parliament this Session, there is good reason, I think, to hope for success. For my own part,

I do not despair to see it seconded by the minister himself. Government must be sensible how important it is, at this moment, to unite the people of Scotland. In these times, it is somewhat to be feared that men, who come forward with just and moderate demands, may, if repulsed, run to the opposite extreme. Those who know the influence, which the body of men, who solicit this reform, possess with the inferior ranks of people in the different counties of Scotland, will not think it a matter of little moment to bind them by every tie to the constitution.

Whatever may be the fate of the English reform, it is a matter totally separate and distinct from ours. However much many of us might approve of a general reform in England, I am sensible it might, upon principle, be *opposed* by some who *support* the one in question. The first is a compleat new modelling of the whole system of representation, and even of the constitution

stitution of parliament itself. The last is only a moderate extension of the privilege of voting, for the representatives of the landed interest of Scotland, to a respectable and independent body of proprietors. This reform, it is as much the policy of government to grant, as the interest of Scotland to demand. Government cannot now make themselves too strong in the only strength which is really permanent, *the Opinion of the People.*

F I N I S,

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